

Basil. It may be, and indeed is, not improbable that the property in question was paid for with the money spoken of by Dr. Ridout, but it was paid by him to William Basil, not as trustee for his wife, nor as her separate estate, but in his own right, and if applied to pay for the property, it was so applied as his own, and the deed from the vendor, Sevier, taken to himself, and the house and lot remained, according to the evidence furnished by the public records as his property from the date of the deed in December, 1842, until April, 1847, when the deeds now sought to be vacated were executed. Under these circumstances, it seems impossible to regard the property as belonging to the wife, and it must, therefore, be liable to the creditors of the husband. The court will sign a decree accordingly.

F. H. STOCKETT, for Complainants.
J. PINKNEY, for Defendants.

JOHN B. WILHELM
vs.
WILLIAM WILHELM AND OTHERS, } SEPTEMBER TERM, 1849.

[PARTITION OF REAL ESTATE UNDER ACT OF 1820.]

The judgment of the commissioners to divide real estate, in regard to its susceptibility to be divided among all the heirs, though not absolutely conclusive, will not be disbursed without proof demonstrating error of judgment, or partiality, or some other good reason for disregarding it.

The provision of the 9th sec. of the act of 1786, ch. 45, prohibiting the commissioners when the land is not worth more than \$15 per acre, from dividing it into shares of less than fifty acres, forms no part of the act of 1820, ch. 191, and was purposely dropped by the legislature.

The objection that two of the heirs at law who are infants, have no part of the inheritance given to them until after the death of their mother the widow, the parts allotted to them being encumbered with her dower for life, is a fatal objection to the return of the commissioners.

The right of election given to the eldest son by the act of 1820, ch. 191, is a valuable right, but has no existence and cannot be enforced unless the commissioners determine that the estate cannot be divided without loss and injury to all the parties, and their return to this effect is confirmed by the court.